IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 138 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

COMMISSIONER OF INCOME-TAX - Applicant(s)

Versus

B P AUTO ENGINEERING CO - Respondent(s)

==========

Appearance :
MR MANISH R BHATT for Applicant
NOTICE UNSERVED for Respondent(s) : 1,
==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 04/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1.The following question has been referred by Income Tax

Appellate Tribunal, Ahmedabad Bench “C” under Section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of the Commissioner of Income Tax :

> “Whether the Appellate Tribunal is right in law and on facts in allowing the claim of the assessee for investment allowance under section 32A of the I.T. Act?”

2. The assessment year is 1983-84 and the relevant accounting year is Samvat Year 2038. The assessee's claim for investment allowance under section 32A of the Act was rejected by the assessing officer. However, the Commissioner (Appeals) has upheld the claim by following the decision of Tribunal in assessee's own case for assessment year 1976-77. The revenue carried the matter in appeal before the Tribunal, but the appeal came to be dismissed by the Tribunal by following its own decision in assessee's own case for assessment year 1976-77 in I.T.A. No.569/Ahd/1985 dated 25/04/1986.

3. The Tribunal has held that no distinguishing facts exist in the year. It has not, thus, assigned any

independent reasons. Mr.M.R.Bhatt, the learned senior standing counsel appearing on behalf of the applicant revenue is not in a position to state, one way or the other, as to whether the earlier decision for assessment year 1976-77 in assessee's own case was challenged or not, and if challenged, the outcome of the same.

4. In these circumstances, considering the fact that the respondent assessee is unserved, the reference is left unanswered. In case the revenue is in a position to bring on record any material to show that the Tribunal's order for assessment year 1976-77 was varied in any manner in relation to the allowance under Section 32A of the Act, it will be open to the revenue to bring the same to the notice of the Tribunal, when the Tribunal adjusts its decision under section 260(1) of the Act.

5. The Reference is accordingly disposed of as unanswered.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

parmar*